

111TH CONGRESS  
1ST SESSION

# S. 937

To amend the Federal Water Pollution Control Act to ensure that sewage treatment plants monitor for and report discharges of raw sewage, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 30, 2009

Mr. LAUTENBERG (for himself, Mr. WHITEHOUSE, and Mr. MENENDEZ) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Federal Water Pollution Control Act to ensure that sewage treatment plants monitor for and report discharges of raw sewage, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Sewage Overflow Com-  
5 munity Right-to-Know Act”.

6 **SEC. 2. DEFINITIONS.**

7 Section 502 of the Federal Water Pollution Control  
8 Act (33 U.S.C. 1362) is amended by adding at the end  
9 the following:

1           “(26) TREATMENT WORKS.—The term ‘treat-  
 2           ment works’ has the meaning given the term in sec-  
 3           tion 212.”.

4   **SEC. 3. MONITORING, REPORTING, AND PUBLIC NOTIFICA-**  
 5           **TION OF SEWER OVERFLOWS.**

6           Section 402 of the Federal Water Pollution Control  
 7   Act (33 U.S.C. 1342) is amended by adding at the end  
 8   the following:

9           “(s) SEWER OVERFLOW MONITORING, REPORTING,  
 10   AND NOTIFICATIONS.—

11           “(1) DEFINITIONS.—In this subsection:

12           “(A) SANITARY SEWER OVERFLOW.—

13           “(i) IN GENERAL.—The term ‘sani-  
 14           tary sewer overflow’ means an overflow,  
 15           spill, release, or diversion of wastewater  
 16           from a sanitary sewer system.

17           “(ii) INCLUSIONS.—The term ‘sani-  
 18           tary sewer overflow’ includes—

19           “(I) overflows or releases of  
 20           wastewater that reach waters of the  
 21           United States;

22           “(II) overflows or releases of  
 23           wastewater in the United States that  
 24           do not reach waters of the United  
 25           States; and

1 “(III) wastewater backups into  
 2 buildings that are caused by blockages  
 3 or flow conditions in a sanitary sewer  
 4 other than a building lateral.

5 “(iii) EXCLUSIONS.—The term ‘sani-  
 6 tary sewer overflow’ does not include—

7 “(I) municipal combined sewer  
 8 overflows or other discharges from the  
 9 combined portion of a municipal com-  
 10 bined storm and sanitary sewer sys-  
 11 tem; or

12 “(II) wastewater backups into  
 13 buildings caused by a blockage or  
 14 other malfunction of a building lateral  
 15 that is privately owned.

16 “(B) SEWER OVERFLOW.—The term  
 17 ‘sewer overflow’ means a sanitary sewer over-  
 18 flow or a municipal combined sewer overflow.

19 “(C) SINGLE-FAMILY RESIDENCE.—

20 “(i) IN GENERAL.—The term ‘single-  
 21 family residence’ means an individual  
 22 dwelling unit.

23 “(ii) INCLUSIONS.—The term ‘single-  
 24 family residence’ includes—

25 “(I) an apartment;

1 “(II) a condominium;

2 “(III) a house; and

3 “(IV) a dormitory.

4 “(iii) EXCLUSIONS.—The term ‘single-  
5 family residence’ does not include the com-  
6 mon areas of a multidwelling structure.

7 “(2) GENERAL REQUIREMENTS.—After the last  
8 day of the 180-day period beginning on the date on  
9 which regulations are promulgated under paragraph  
10 (5), a permit issued, renewed, or modified under this  
11 section by the Administrator or the State, as the  
12 case may be, for a publicly owned treatment works  
13 shall require, at a minimum, beginning on the date  
14 of the issuance, modification, or renewal, that the  
15 owner or operator of the treatment works—

16 “(A) institute and utilize a feasible meth-  
17 odology, technology, or management program  
18 for monitoring sewer overflows to alert the  
19 owner or operator to the occurrence of a sewer  
20 overflow in a timely manner;

21 “(B) in the case of a sewer overflow that  
22 has the potential to affect human health, notify  
23 the public of the overflow as soon as practicable  
24 but not later than 24 hours after the time the  
25 owner or operator knows of the overflow;

1           “(C) in the case of a sewer overflow that  
2           may imminently and substantially endanger  
3           human health, notify public health authorities  
4           and other affected entities, such as public water  
5           systems, of the overflow immediately after the  
6           owner or operator knows of the overflow;

7           “(D) report each sewer overflow on the  
8           discharge monitoring report of the owner or op-  
9           erator to the Administrator or the State, as the  
10          case may be, by describing—

11                 “(i) the magnitude, duration, and sus-  
12                 pected cause of the overflow;

13                 “(ii) the steps taken or planned to re-  
14                 duce, eliminate, or prevent recurrence of  
15                 the overflow; and

16                 “(iii) the steps taken or planned to  
17                 mitigate the impact of the overflow; and

18           “(E) annually report to the Administrator  
19           or the State, as the case may be, the total num-  
20           ber of sewer overflows in a calendar year, in-  
21           cluding—

22                 “(i) the details of how much waste-  
23                 water was released per incident;

24                 “(ii) the duration of each sewer over-  
25                 flow;

1 “(iii) the location of the overflow and  
2 any potentially affected receiving waters;

3 “(iv) the responses taken to clean up  
4 the overflow; and

5 “(v) the actions taken to mitigate im-  
6 pacts and avoid further sewer overflows at  
7 the site.

8 “(3) EXCEPTIONS.—

9 “(A) NOTIFICATION REQUIREMENTS.—The  
10 notification requirements of subparagraphs (B)  
11 and (C) of paragraph (2) shall not apply to a  
12 sewer overflow that is a wastewater backup into  
13 a single-family residence.

14 “(B) REPORTING REQUIREMENTS.—The  
15 reporting requirements of subparagraphs (D)  
16 and (E) of paragraph (2) shall not apply to a  
17 sewer overflow that is a release of wastewater  
18 that occurs in the course of maintenance of the  
19 treatment works, is managed consistently with  
20 the treatment works’ best management prac-  
21 tices, and is intended to prevent sewer over-  
22 flows.

23 “(4) REPORT TO EPA.—Each State shall pro-  
24 vide to the Administrator annually a summary of  
25 sewer overflows that occurred in the State.

1           “(5) RULEMAKING BY EPA.—Not later than 1  
 2           year after the date of enactment of this subsection,  
 3           the Administrator, after providing notice and an op-  
 4           portunity for public comment, shall promulgate reg-  
 5           ulations to implement this subsection, including reg-  
 6           ulations—

7                   “(A) to establish a set of criteria to guide  
 8                   the owner or operator of a publicly owned treat-  
 9                   ment works in—

10                           “(i) assessing whether a sewer over-  
 11                           flow may imminently and substantially en-  
 12                           danger human health; and

13                           “(ii) developing communication meas-  
 14                           ures that are sufficient to give notice  
 15                           under subparagraphs (B) and (C) of para-  
 16                           graph (2); and

17                   “(B) to define the terms ‘feasible’ and  
 18                   ‘timely’ as those terms apply to paragraph  
 19                   (2)(A), including site specific conditions.

20           “(6) APPROVAL OF STATE NOTIFICATION PRO-  
 21           GRAMS.—

22                   “(A) REQUESTS FOR APPROVAL.—

23                           “(i) IN GENERAL.—After the date of  
 24                           promulgation of regulations under para-  
 25                           graph (5), a State may submit to the Ad-

1            administrator evidence that the State has in  
 2            place a legally enforceable notification pro-  
 3            gram that is substantially equivalent to the  
 4            requirements of subparagraphs (B) and  
 5            (C) of paragraph (2).

6            “(ii) PROGRAM REVIEW AND AUTHOR-  
 7            IZATION.—If the evidence submitted by a  
 8            State under clause (i) shows the notifica-  
 9            tion program of the State to be substan-  
 10          tially equivalent to the requirements of  
 11          subparagraphs (B) and (C) of paragraph  
 12          (2), the Administrator shall authorize the  
 13          State to carry out that program instead of  
 14          those requirements.

15          “(iii) FACTORS FOR DETERMINING  
 16          SUBSTANTIAL EQUIVALENCY.—In carrying  
 17          out a review of a State notification pro-  
 18          gram under clause (ii), the Administrator  
 19          shall take into account—

20                  “(I) the scope of sewer overflows  
 21                  for which notification is required;

22                  “(II) the length of time during  
 23                  which notification must be made;

24                  “(III) the scope of persons that  
 25                  must be notified of sewer overflows;



1 “(IV) the scope of enforcement  
2 activities ensuring that notifications of  
3 sewer overflows are made; and

4 “(V) such other factors as the  
5 Administrator considers to be appro-  
6 priate.

7 “(B) REVIEW PERIOD.—If a State submits  
8 evidence with respect to a notification program  
9 under subparagraph (A)(i) on or before the last  
10 day of the 30-day period beginning on the date  
11 of promulgation of regulations under paragraph  
12 (5), the requirements of subparagraphs (B) and  
13 (C) of paragraph (2) shall not begin to apply to  
14 a publicly owned treatment works located in the  
15 State until the date on which the Administrator  
16 completes a review of the notification program  
17 under subparagraph (A)(ii).

18 “(C) WITHDRAWAL OF AUTHORIZATION.—  
19 If the Administrator, after conducting a public  
20 hearing, determines that a State is not admin-  
21 istering and enforcing a State notification pro-  
22 gram authorized under subparagraph (A)(ii) in  
23 accordance with the requirements of this para-  
24 graph, the Administrator shall so notify the  
25 State and, if appropriate corrective action is not

1 taken within a reasonable time, not to exceed  
2 90 days, the Administrator shall withdraw au-  
3 thorization of such program and enforce the re-  
4 quirements of subparagraphs (B) and (C) of  
5 paragraph (2) with respect to the State.

6 “(7) SPECIAL RULES CONCERNING APPLICA-  
7 TION OF NOTIFICATION REQUIREMENTS.—After the  
8 last day of the 30-day period beginning on the date  
9 of promulgation of regulations under paragraph (5),  
10 the requirements of subparagraphs (B) and (C) of  
11 paragraph (2) shall—

12 “(A) apply to the owner or operator of a  
13 publicly owned treatment works and be subject  
14 to enforcement under section 309; and

15 “(B) supersede any notification require-  
16 ments contained in a permit issued under this  
17 section for the treatment works to the extent  
18 that the notification requirements are less strin-  
19 gent than the notification requirements of sub-  
20 subparagraphs (B) and (C) of paragraph (2), until  
21 such date as a permit is issued, renewed, or  
22 modified under this section for the treatment  
23 works in accordance with paragraph (2).”.

1   **SEC. 4. ELIGIBILITY FOR ASSISTANCE.**

2           (a) PURPOSE OF STATE REVOLVING FUND.—Section  
3   601(a) of the Federal Water Pollution Control Act (33  
4   U.S.C. 1381(a)) is amended—

5               (1) by striking “and” the first place it appears;  
6       and

7               (2) by inserting after “section 320” the fol-  
8       lowing: “, and (4) for the implementation of require-  
9       ments to monitor for sewer overflows under section  
10      402”.

11          (b) WATER POLLUTION CONTROL REVOLVING LOAN  
12   FUNDS.—Section 603(c) of the Federal Water Pollution  
13   Control Act (33 U.S.C. 1383(c)) is amended—

14               (1) by striking “and” the first place it appears;  
15      and

16               (2) by inserting after “section 320 of this Act”  
17      the following: “, and (4) for the implementation of  
18      requirements to monitor for sewer overflows under  
19      section 402”.

20   **SEC. 5. EFFECT OF ACT.**

21          Nothing in this Act or an amendment made by this  
22   Act—

23               (1) limits the ability of any State to implement  
24      or enforce a more stringent monitoring or notifica-  
25      tion standard than the applicable standard under

1       the Federal Water Pollution Control Act (33 U.S.C.  
2       1251 et seq.); or

3               (2) authorizes any sewer overflow, or supplants  
4       or diminishes any obligation to comply with any  
5       other requirement under this chapter or any other  
6       Federal or State law.

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